

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Frank D. Frazer, #21038	)	
Petitioner,	)	
	)	C.A. 2:03-0738- PMD
v.	)	<b><u>ORDER</u></b>
State of South Carolina,	)	
Henry McMaster,	)	
Respondents.	)	
_____	)	

This Court by way of an order dated February 12, 2004, attached and made a part of this order, issued a conditional writ of habeus corpus under §2254. The order provided “that the court shall issue a writ of habeus corpus under §2254 with respect to Frazer’s claim of ineffective assistance of counsel for failure to note a direct appeal without consultation, provided, however, that the writ shall not issue in the event the State grants Frazer a belated appeal within ninety days of the date of the order and appoints Frazer counsel for purposes of the direct appeal.” The State of South Carolina appealed the finding of the District Court. In Frazer v. South Carolina, 430 F.3d 696 (4<sup>th</sup> Cir. 2005), the Fourth Circuit affirmed the finding of the District Court. A petition for rehearing was denied on May 10, 2006.

The State moved for an extraordinary writ before the South Carolina Supreme Court asking that the state court address the District Court’s order. In the motion for an extraordinary writ, the State calculated that the deadline for the state court to appoint counsel and a grant a “leave of appeal” was August 8, 2006, ninety days from the May 10, 2006 denial for rehearing. On May 26, 2006, the South Carolina Supreme Court appointed the South Carolina Commission on Indigent Defense, Division of Appellate Defense to represent Mr. Frazer. Kathrine H. Hudgins, appellate defender, represented

Mr. Frazer. On June 9, 2006, Frazer, through appointed counsel, filed a return to the State's motion for an extraordinary writ and asked the state court to establish a briefing schedule for the belated appeal. On July 21, 2006, the South Carolina Supreme Court denied the State's motion. The State failed to grant Frazer a belated appeal within the ninety day time frame (August 8, 2006) established in the previous order. Now therefore,

**IT IS HEREWITH ORDERED**, for the reasons stated in this Court's Order dated February 12, 2004, and the opinion of the Fourth Circuit Court of Appeals filed on December 8, 2005 affirming that Order, that Frazer's habeas petition is hereby **GRANTED!**

**AND IT IS SO ORDERED.**

  
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PATRICK MICHAEL DUFFY  
United States District Judge

**Charleston, South Carolina**  
**October 2, 2006**